LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 19 1966
JOHN F. ...K

No. 373

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

SYLVANIA ELECTRIC PRODUCTS, INC., *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

and

LOCAL 352, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF FOR LOCAL 352, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO IN OPPOSITION

IRVING ABRAMSON
RUTH WEYAND
MARILYN G. ROSE
1126 16th Street, N.W.
Washington, D. C. 20036
Attorneys for Local 352, International Union of Electrical, Radio and Machine Workers, AFL-CIO

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	3
Statement of the Case	3
A. The Board's Findings of Fact	3
B. The Board's Decision and Order	8
C. The Court of Appeals Decision	8
Argument	10
1. There Is No Novel Standard Which Warrants Grant of the Petition With Respect to the Mandatory Subjects of Collective Bargaining	10
2. There Is No Conflict of Decisions Which Warrants Grant of the Petition	14
Conclusion	16

TABLE OF CASES

Boston-Herald Traveler Corp. v. *N.L.R.B.*, 233 F. 2d 58 (C.A. 1) 10-11

Curtiss-Wright Corporation v. *N.L.R.B.*, 347 F. 2d 61 (C.A. 3) 11

Inland Steel Co. v. *N.L.R.B.*, 170 F. 2d 247 (C.A. 7), cert. den. 336 U.S. 960, enf.'g 77 NLRB 1 10

International Woodworkers of America v. *N.L.R.B.*, 263 F. 2d 483 (C.A.D.C.) 11

N.L.R.B. v. *Feed & Supply Center*, 294 F. 2d 650 (C.A. 9), enf.'g 127 NLRB 276 10

Page

N.L.R.B. v. *John S. Swift Co.*, 277 F. 2d 641 (C.A. 7), enf.'g 124 NLRB 394 ..... 10, 15
N.L.R.B. v. *Otis Elevator*, 208 F. 2d 176 (C.A. 2) 12
N.L.R.B. v. *Truitt Manufacturing Co.*, 351 U.S. 149 .. 9, 14
N.L.R.B. v. *Whitin Machine Works*, 217 F. 2d 593 (C.A. 4), cert. den. 349 U.S. 905 11
N.L.R.B. v. *Woolworth Co.*, 352 U.S. 938, rev. 235 F. 2d 319 (C.A. 9) 10
Sylvania Electric Products v. *N.L.R.B.*, 291 F. 2d 128 (C.A. 1), cert. den., 368 U.S. 926 ..... 9, 10
Taylor Forge & Pipe Works v. *N.L.R.B.*, 234 F. 2d 227 (C.A. 7), cert. den. 352 U.S. 942 ..... 11, 13
W.W. Cross v. *N.L.R.B.*, 174 F. 2d 875 (C.A. 1), enf.'g 77 NLRB 1162 10

STATUTES:

National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. 151, et seq. 3
Welfare and Pension Disclosure Act of 1959, 72 Stat. 997, 29 U.S.C. Sec. 301 et seq. 9, 15

CONGRESSIONAL MATERIAL:

85 Cong. Rec. (1958), second session, (remarks of Congressman Dent) 16428 ..... 9, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 373

SYLVANIA ELECTRIC PRODUCTS, INC., *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

and

LOCAL 352, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF FOR LOCAL 352, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO IN OPPOSITION

The opinion of the Court of Appeals (Pet. 1a-4a)[1] is reported at 358 F. 2d 581. The decision and order of the National Labor Relations Board, hereinafter

[1] "Pet." refers to the Petition.

called the Board, (J.A. 51-68)[2] is reported at 154 NLRB No. 149.

JURISDICTION

The decision and decree of the Court of Appeals (Pet. 1a-4a)[3] were entered on April 5, 1966. A petition for rehearing was denied on April 21, 1966. The petition for a writ of certiorari was filed on July 20, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

1. Did the Court of Appeals correctly enforce the Board's decision and order that the Company violated its obligation to bargain in good faith with the duly certified and recognized bargaining representative of its employees by refusing during the course of negotiations to furnish the Union with the premium cost data of its proposed improvements and changes in an employee insurance program?

---

[2] "J.A." refers to the Joint Appendix in the court below which has been filed with the petition.

[3] The reprinting of the decision in the petition omits the footnote citation to the holding of the case and should be corrected thus:

> "However, when the union makes the same demand in order to evaluate the desireability of an increase in welfare benefits as against an equivalent increase in take-home pay,[2] matters as to which the employer must bargain, the Board might properly conclude that the information, though collateral, was so necessary to effective negotiation that withholding it without good reason was inconsistent with the duty to 'exert every reasonable effort to make and maintain agreements.' *N.L.R.B.* v. *Truitt Mfg. Co.*, supra at 152, 76 S. Ct. at 755.
>
> "[2] Cf. 104 Cong. Rec. 16428 (1958) (Remarks of Rep. Dent)."

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are reprinted in the petition (Pet. 4a-6a).

STATEMENT OF THE CASE

A. The Board's Findings of Fact

This case arises out of negotiations between Sylvania Electric Products Inc., hereinafter called the Company, and International Union of Electrical, Radio and Machine Workers, AFL-CIO and its Local 352, hereinafter collectively called the Union, for a new collective bargaining agreement to succeed an agreement which would expire by its terms on September 30, 1964. The negotiations concerned solely the Batavia, New York, plant of the Company (J.A. 53-43).

Prior to the commencement of formal negotiations, the Union, by letter dated June 11, 1964, requested certain information from the Company concerning cost data in respect to the pension, insurance and savings security program (J.A. 55). With cover letter dated July 21, 1964, the Company furnished the Union with past and current pension and group insurance data, including payments made and actuarial assumptions, in the case of the pension plan, and claim and premium expenses, in the case of the group insurance program (J.A. 55).

Formal negotiations commenced on July 24, 1964, in a conference room of the Company's Batavia plant (J.A. 56). At this meeting the Company and the Union exchanged proposals for changes in the existing contract (J.A. 56). The Union's proposal included,

inter alia, improvements in the insurance and pension programs (J.A. 56).

With cover letter dated August 10, 1964, the Company made its economic offer to the Union (J.A. 56). The offer included, *inter alia,* changes in the pension and group insurance programs (J.A. 56). Following this written offer the parties met on August 12, 1964, at which meeting Peter Scibetta, the Chairman of the Union's Sylvania Conference Board, asked Joseph Gill, the Company's Manager of Industrial Relations at the Batavia plant, to break down the economic offer in terms of the hourly cost to the Company for all the items contained in the package[4] (J.A. 56-57). Gill replied that the Company never bargained on the basis of cost but bargained on the level of benefits (J.A. 56). Scibetta asked if the Company did not look at the cost to which Gill replied that he would not be sitting there if it did not look at costs but that he would not give the cost breakdown to the Union as the Company was not obligated to do so (J.A. 56).

The next negotiating meeting took place on September 8, 1964, after a three week vacation shutdown (J.A. 57). At this meeting Earl Kipp, Assistant Director of the Union's Pension and Insurance Department, presented and explained the suggested improvements the Union desired in the pension and insurance programs (J.A. 57). The Union continued the presentation of its proposals at the next two meetings held on September 11 and 16, 1964 (J.A. 57). At the latter

[4] The Company's statement in its petition that there was conflicting testimony as to whether any request for a cost breakdown was made prior to September 23 (Pet. 7) ignores the fact that the Trial Examiner made a finding, adopted by the Board, that Scibetta made such a request (J.A. 51, 56-57).

meeting Gill stated that the Union's economic demands were substantial and represented a sizable cost to the Company if it were to accept them (J.A. 57).

At the September 17 meeting, during a discussion of job evaluation challenges, Gill stated that the Union's suggested changes would represent a cost to the Company and that any change in the job evaluation system actually became a part of a wage package if the Company were to agree to it (J.A. 57). When Gill further commented that the Union's proposals on the job evaluation challenges would put the Company in a position of not being competitive, Scibetta asked for a cost breakdown and pointed out that the Union was there to represent people and not misrepresent them, that to put the Company in a noncompetitive position would only result in jobs being lost, and that that was certainly not representing people (J.A. 57-58).

Scibetta was absent from the next negotiation session held on September 23 and was replaced on the Union's negotiation team by a staff representative, Clifford Haley (J.A. 58). At the beginning of the meeting Haley requested the cost breakdown of the Company's package[5] to which Gill responded that the Company bargained on the level of benefits and not on cost (J.A. 58). McCready, the Local's vice-president, stated that she understood that the Company had attached a cost to the package and the Union was asking for it and was entitled to it (J.A. 58). Gill admitted that the Company did, of course, attach a cost to the package but still persisted in his position (J.A. 58). Haley then

[5] This request was made because prior to the beginning of the meeting Haley had been briefed by the other members of the negotiating team as to the prior negotiations and the problems they were having, including the need for cost information (J.A. 32).

asked for a breakdown of the comparative worth of the package at the Company's Buffalo plant and at Batavia; he stated that if there was a difference he would request the Company to spread the difference over the other benefits[6] (J.A. 58). Gill said that he would consider it but would not like to improve the package by thirty percent (J.A. 58). Haley then stated that he understood that the Company attached a cost to the pension package but that he did not consider it worth one-half a cent (J.A. 58). Gill again agreed that there was a cost to the pension package but said that the Union had to consider all the improvements and that it was a good package (J.A. 58-59).

Joy, another member of the Union's negotiation team and an employee at the Batavia plant, commented that he would just as soon take the insurance package in the previous contract and if there was any additional cost he would like to have the Company add it to the wage offer (J.A. 59). Another union committeeman stated that if the Company wanted the Union to sign the contract they would have to give the Union's negotiators something to sell (J.A. 59). The meeting adjourned after the Union's negotiators stated that they could not intelligently explain the Company's package to the employees unless they understood the package themselves and for that understanding they needed the cost information (J.A. 59). Prior to the adjournment the Company took a short recess and then informed

[6] The same economic package was offered to IUE Local 511 at the Company's Buffalo plant, but because the plant was older, with longer-service employees, the Union surmised that the cost of the pension plan improvements would be higher at Buffalo (J.A. 19-21). The Company conceded at the hearing that the age of the Buffalo group would have this effect upon the cost of the pension and vacation benefits (J.A. 45).

the Unions negotiators that they remained adamant in their refusal to furnish the information (J.A. 59).

On that same date the Union sent a formal written request for the cost information to the Company (J.A. 59) and the Company sent a written answer two days later refusing the request (J.A. 59-60). In the interim the Union filed the charges which began the instant proceeding (J.A. 60). On September 28 the parties met again, Scibetta again asked for the information and Gill again took the position that it was not going to give the Union the information and that the Union was not entitled to the information (J.A. 60). The parties reached agreement on a contract at 1:30 a.m. on the morning of October 1, 1964 (one and one-half hours after the prior agreement terminated).[7] After

---

[7] The record is clear that the amount of wage increases was an issue in negotiations and it kept the parties from getting together sooner than they did (J.A. 50-51). In this respect the following colloquy between the Trial Examiner and a Company witness took place:

"Trial Examiner: Was there a specific dollar and cents request higher than the one which was finally agreed upon?

The Witness: Oh, yes.

Trial Examiner: Substantially?

The Witness: During the last two or three days of negotiations, the union officer requested a nickel an hour more. As I mentioned earlier, to make up for this so-called inequity between the Buffalo and Batavia plant.

Trial Examiner: And before that, was the request even more than that, higher than that, union's request higher than a nickel an hour?

The Witness: I believe that—I believe there was a request for three and a half or four per cent general wage increase. I'm a little vague on that.

Trial Examiner: Well, was wages then one of the issues which kept the parties from getting together sooner than they did?

The Witness: It certainly was a factor, yes?" (J.A. 50-51).

reaching agreement Scibetta was asked if the Union was going to pursue the charge to which Scibetta responded yes, that the Union did not want to be in the same position three years hence when this contract would expire (J.A. 61).

B. The Board's Decision and Order

The Board adopted the findings, conclusions and recommendations of the Trial Examiner (J.A. 51) that the Company violated Section 8(a)(1) and (5) of the Act by refusing to furnish to the Union the estimated cost of its proposed improvements in its noncontributory pension and insurance programs (J.A. 64). In reaching his conclusion the Trial Examiner made alternative findings. In the first place he followed the Board's rationale in earlier cases that premiums paid by a company under a non-contributory insurance program constitute "wages" concerning which bargaining is required by the Act and therefore premium cost data is directly related to the matter of wages (J.A. 61-62). In the second place he found that the record established that the Company itself made costs a relevant bargaining issue and therefore the Union was entitled to the information (J.A. 62-63).

C. The Court of Appeals Decision

The Court of Appeals enforced the Board's Order. It held that when a union, during the course of negotiations, requests the premium cost in the employer's *proposed changes* in welfare benefits in order to evaluate the desirability of such changes vis-a-vis an equivalent increase in take-home pay, the Board might properly conclude that such information was so necessary to effective negotiation that withholding it was incon-

sistent with the employer's duty to bargain. In support of its holding the court cited this Court's decision in *N.L.R.B.* v. *Truitt Mfg. Co.*, 351 U.S. 149, and cited a reference to the remarks of Representative Dent (footnote 3 *supra*) during the debate over the scope of the Welfare and Pension Disclosure Act of 1959 (72 Stat. 997, 29 U.S.C. Sec. 301 et seq.). In rejecting a distinction between contributory and noncontributory welfare plans the Congressman stated,

> "The assumption is that the employer is paying for it and, therefore, the employee who is a participant has no equity in the plan. That is not true of any welfare or pension plan in existence in the country today. There is no such thing as a giveaway plan in which an employer gives anything to anybody. In every instance, whether it is a matter of negotiations across the bargaining table, an agreement, or if it is merely mentioned in the employment contract, if such a contract is in effect, or in the mere act of employment of a person by an employer who has a benefit plan, *there is an assumption that a certain amount of money is given in lieu of wages by containing that man's welfare in a welfare plan* of some kind, whether it be pension, hospitalization or other plan covered by this bill" (At. p. 16428). (Emphasis supplied).

The court distinguished its earlier decision in *Sylvania Electric Products, Inc.* v. *N.L.R.B.*, 291 F. 2d 128, referred sometimes herein as the first *Sylvania* case, in which it held that while the *benefits* of noncontributory plans were "wages" within the meaning of the National Labor Relations Act, the premium costs were not wages and that the union (in that case the Steelworkers) was not *per se* entitled to the premium cost data of past and current benefits. In the instant case, the court distinguished the duty to dis-

close past and current premium data in order for the union to determine whether the employer was obtaining the best coverage for the money, as in the first *Sylvania* case, and the duty to disclose the premium costs of proposed changes in pension and insurance benefits in order for the union to evaluate the desireability of an increase in such benefits rather than equivalent economic increase in take-home pay.

ARGUMENT

1. There Is No Novel Standard Which Warrants Grant of the Petition With Respect to the Mandatory Subjects of Collective Bargaining

The Company's first position in support of its Petition, i.e. that the decision below erases the distinction between mandatory and nonmandatory subjects of bargaining, is totally incorrect. The facts of this case concern bargaining over pension and insurance benefits which the Board and Court of Appeals have long found were mandatory subjects of collective bargaining. E.g., *Inland Steel Co.* v. *N.L.R.B.*, C.A. 7, 170 F. 2d 247, cert. den. 336 U.S. 960, enf.'g 77 NLRB 1; *W. W. Cross & Co.* v. *N.L.R.B.*, C.A. 1, 174 F. 2d 875, enf.'g 77 NLRB 1162; *N.L.R.B.* v. *John S. Swift Co.*, C.A. 7, 277 F. 2d 641, enf.'g 124 NLRB 394; *N.L.R.B.* v. *Feed & Supply Center*, C.A. 9, 294 F. 2d 650, enf.'g 127 NLRB 276. More specifically it involves the failure of the Company to furnish information relevant to an intelligent choice of increases in such benefits vis-a-vis an increase in direct take-home pay, both of which are mandatory subjects of collective bargaining.

This Court (*N.L.R.B.* v. *F. W. Woolworth Co.*, 352 U.S. 938) and the various Court of Appeals (E.g., *Boston-Herald Traveler Corp.* v. *N.L.R.B.*, C.A. 1,

233 F. 2d 58; *Taylor Forge & Pipe Works* v. *N.L.R.B.*, C.A. 7, 234 F. 2d 227, cert. den. 352 U.S. 942; *N.L.R.B.* v. *Whitin Machine Works,* C.A. 4, 217 F. 2d 593, cert. den. 349 U.S. 905; *International Woodworkers of America* v. *N.L.R.B.,* C.A.D.C., 263 F. 2d 483, 484) have followed the Board's rule that if the information sought relates to the wages or fringe benefits of the employees, the information is obviously related to the bargaining process and the employer's refusal to furnish the information, without more, violates its obligations to bargan under Section 8(a)(5). As stated by the Third Circuit,

> "Without the disclosure of relevant information both contract negotiations and the institution of grievance and arbitration procedures under existing agreements would be hampered. Merely meeting and conferring without a prior exchange of requested data, where such is relevant, does not facilitate *effective* collective bargaining and, therefore, does not meet the requirements of Section 8(a)(1) and (5). Because of the need to facilitate effective collective bargaining, a refusal to furnish data is an unfair labor practice notwithstanding the good faith of an employer in rejecting the request." *Curtiss-Wright Corp.* v. *N.L.R.B.,* 347 F. 2d 61, 68.

The Company relies upon *International Woodworkers of America* v. *N.L.R.B.,* 263 F. 2d 483, in support of its proposition that the matters involved are outside the realm of mandatory bargaining (See Pet. 15). However, the Court of Appeals for the District of Columbia drew a distinction between wage information and sales and production information. In that case the court held that a union is *per se* entitled to wage information and, depending upon the circumstances of

the particular case, may also be entitled to the latter information. Whether the "benefits" or the "premium costs", or both are wages within the meaning of the Act,[8] the welfare program itself is a mandatory subject of bargaining in contrast with the employer's production and sales programs. As the welfare program is a mandatory subject of bargaining, the exclusive bargaining representative of the employees must be entitled, *per se,* to the relevant information of that program, including the cost data which make the program and the offered change meaningful.

In the instant proceeding, the Company presented the Union with an economic package, including a wage increase, increased vacation for certain employees, an additional holiday, increases and modifications in health and hospitalization insurance, and increased life insurance and pension benefits (J.A. 155-172). No item in this offer represented a "gift" from the Company but involved the consideration for the labor and services of the employees (See comments of Congressman Dent, *supra,* p.). To the extent that any item of this offer was in any form other than dollars, the Union was entitled to have the form translated into dollar terms in order that it might, as in the instant case, determine whether it preferred the allegedly nonmonetary benefits or straight take-home pay. Otherwise, the offer was unintelligible. In the interest of collective bargaining employers have been ordered to furnish unions with the details of the job evaluation

---

[8] Although the Board and the Union urged as an alternative argument in the court below that the concept of "wages" included the premiums paid as well as the benefits, it was unnecessary to decide that issue on the facts of the instant case as found by the Board and the court.

system utilized in fixing incentive standards (*N.L.R.B.* v. *Otis Elevator,* 208 F. 2d 176, C.A. 2) and have been ordered to furnish "point ratings" used in determining each employee's rate of pay (*Taylor Forge & Pipe Works* v. *N.L.R.B.,* 234 F. 2d 227, C.A. 7). In both cases *actual* wages would not be otherwise understandable. The same applies to welfare and pension programs offers in negotiations.

The Company obviously does not, and can not quarrel with the fact that wages is a mandatory subject of collective bargaining. In the instant case the Union had requested a larger increase in weekly wages; the Company conceded that it was one of the issues which prevented an earlier agreement. The Union's negotiators, *albeit* willing to take a larger increase rather than the new fringe benefits, had no way of knowing the amount of extra cents per hour represented by the offered additional fringe benefits.[9] The court below was correct in concluding that the information requested was relevant to effective negotiation and the refusal to divulge the information was a violation of the Company's duty to bargain.

---

[9] The Union's representatives could not calculate these figures as such items as contingency reserves are unknown factors in such calculations. It should be noted that the Company conceded at the hearing that it hires an actuary to compute the estimated cost of its insurance and pension program and that it takes the estimated cost (which it believes reliable) into account in arriving at the level of benefits it offers the Union at the bargaining table (J.A. 48-49).

2. There Is No Conflict of Decisions Which Warrants Grant of the Petition

In support of its contention that this Court's decision in *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149, was incorrectly cited in support of the holding in the instant case, the Company ignores the findings of fact of the Trial Examiner and the Board that cost indeed was injected into the negotiations. Thus, after the Union made certain requests for changes in the job evaluation system, the Company responded that any such changes would become a part of a wage package if the Company were to agree to them and that the Union's proposals *would* put the Company in a position of not being competitive (J.A. 57-58). To these statements the Union responded with a cost breakdown request in order that it might represent and not misrepresent the employees (J.A. 58). This request was rejected. Similarly, after the Union requested the cost breakdown of the package at the Buffalo plant as compared with the Batavia plant in order that it might spread the difference over other benefits, the Company responded that it *could not* improve the package by 30 percent (J.A. 58). In this factual context, which the court below did not reject, the court was not in error in citing the opinion of this Court in *N.L.R.B.* v. *Truitt Manufacturing, supra*, in support of its holding that the Board might properly conclude that the withholding of the information was inconsistent with the Company's duty to bargain.

Further, there is no conflict of decisions with other circuits. Thus, the decision of the court below that the Union was entitled to this information comports with the decision of the Court of Appeals for the Seventh

Circuit in N.L.R.B. v. *John S. Swift Co.*, 277 F. 2d 641. In that case the Seventh Circuit found that the failure to furnish a breakdown as to the cost of a health and welfare plan was violative of an employer's duty to bargain. The Company cites no decision in any other circuit, and we can find none, in support of its proposition that the Union is not entitled to cost data of offered changes in a welfare and pension plan during the negotiations for a new collective bargaining agreement.

Finally, there is no conflict with any other decision of the court below as asserted by the Company. Whether or not the court was correct in the earlier *Sylvania* case to the effect that the Company was not *per se* obligated to furnish the Steelworkers with the past and current cost breakdown of its pension and insurance benefits,[10] the instant case involved offered changes in the program as part of an economic package, cost was made a factor in the negotiations by the Company, and the Union was denied the opportunity to make an intelligent choice of the acceptance or rejection of the offer of the increase in these fringe benefits vis-a-vis a desired increase in take-home pay. Under these circumstances the Court was correct in concluding that its own earlier decision was distinguishable.

---

[10] The information denied to the Steelworkers in the earlier Sylvania case was furnished to the Union in the instant case. After the negotiations underlying that earlier case were completed the Welfare and Pension Disclosure Act of 1959, 72 Stat. 997, 29 U.S.C. Sec. 301 et seq. went into effect. The issues in that case involving past and current cost data became moot as the information was thereafter a required part of the public record.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should in all respects be denied.

Respectfully submitted,

IRVING ABRAMSON
RUTH WEYAND
MARILYN G. ROSE
1126 16th Street, N.W.
Washington, D. C. 20036
Attorneys for Local 352, International Union of Electrical, Radio and Machine Workers, AFL-CIO

August 19, 1966